

CADON  
XC 20  
-1989  
L29



---

# Standing Committee on the Legislative Assembly

## Report on Confidentiality Provisions

2nd Session, 34th Parliament  
38 Elizabeth II





Ontario

LEGISLATIVE ASSEMBLY  
ASSEMBLÉE LÉGISLATIVE



**STANDING COMMITTEE  
ON THE LEGISLATIVE ASSEMBLY**

**REPORT ON  
CONFIDENTIALITY PROVISIONS**

2nd Session, 34th Parliament  
38 Elizabeth II

CA20X  
XC20  
-1989  
L29





STANDING COMMITTEE ON  
THE LEGISLATIVE ASSEMBLY



Ontario

LEGISLATIVE ASSEMBLY  
ASSEMBLÉE LÉGISLATIVE

TORONTO, ONTARIO

M7A 1A2

COMITÉ PERMANENT DE  
L'ASSEMBLÉE LÉGISLATIVE

The Honourable Hugh Edighoffer, M.P.P.  
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on the Legislative Assembly has  
the honour to present its Report and commends it to the  
House.

A handwritten signature in dark ink, reading "Herbert A. Epp".

Herbert A. Epp, M.P.P.  
Chair

Queen's Park  
October 1989



Digitized by the Internet Archive  
in 2022 with funding from  
University of Toronto

<https://archive.org/details/31761114686108>

TABLE OF CONTENTS

Page

MEMBERSHIP OF THE STANDING COMMITTEE ON

THE LEGISLATIVE ASSEMBLY

MEMBERS OF PARLIAMENTARY COUNCILS

Area of Independent Function of Assembly  
Area of Advisory Function of Assembly

APPENDIX A: Proposed Areas of Independent Function and  
Advisory Function of the Standing Committee  
Trade Union, Government and the Assembly

APPENDIX B: Confidentiality Provisions which Should Not Undermine  
the Principle of Independence and Protection of Privacy  
Act 1987

HERBERT A. EPP  
Chair  
STERLING CAMPBELL  
Vice-Chair

MICHAEL BREAUUGH  
MIKE FARNAN  
JACK JOHNSON (Wellington)  
GINO MATRUNDOLA  
CARMAN McCLELLAND

GILLES MORIN  
NORMAN STERLING, Q.C.  
NORAH STONER  
BARBARA SULLIVAN

---

DEBORAH DELLER  
Clerk of the Committee

JENNIFER WILSON  
Research Officer







## TABLE OF CONTENTS

	<u>Page No.</u>
SUMMARY OF RECOMMENDATIONS	1
INTRODUCTION	3
REVIEW OF CONFIDENTIALITY PROVISIONS	3
Areas of Inadequate Protection of Interests	3
Areas of Adequate Protection of Interests	7
APPENDIX A: Proposed Amendments to the <u>Freedom of Information and Protection of Privacy Act, 1987</u> for Labour Mediators, Trade Union Membership and Tax Records	9
APPENDIX B: Confidentiality Provisions Which Should Not Override the <u>Freedom of Information and Protection of Privacy Act, 1987</u>	10



## SUMMARY OF RECOMMENDATIONS

### Areas of Inadequate Protection of Interests

1. *The amendments to the Freedom of Information and Protection of Privacy Act, 1987 proposed by Management Board of Cabinet for the categories of Labour Mediators, Trade Union Membership and Tax Records and listed in Appendix A to this report should be accepted.*
2. *The following overrides to the Freedom of Information and Protection of Privacy Act, 1987 proposed by Management Board of Cabinet in its report on confidentiality provisions should be accepted:*
  - Assessment Act, s. 57(1)*
  - Child and Family Services Act, 1984, ss. 41(8), (9), (10); 50(4), (5); 70(5); 71(6); 72(11); 112(6) and 158a(1), (5)*
  - Commodity Futures Act, s. 10*
  - Courts of Justice Act, 1984, s. 147(2)*
  - Pay Equity Act, 1987, s. 32(4)*
  - Securities Act, s. 14*
  - Statistics Act, s. 4(2)*
  - Vital Statistics Act, s. 24(2).*
3. *An override to the Freedom of Information and Protection of Privacy Act, 1987 should be provided for:*
  - the Health Insurance Act, s. 44*
  - the Health Protection and Promotion Act, 1983, s. 38*
  - the Ontario Drug Benefit Act, 1986, s. 13.*
4. *The Chairman of Management Board of Cabinet should consider an amendment to the Public Service Act or other relevant legislation which would clearly outline the duties for civil servants to maintain confidentiality other than as provided for in the Freedom of Information and Protection of Privacy Act, 1987.*

### Areas of Adequate Protection of Interests

5. *The confidentiality provisions listed in Appendix B to this report should not continue to override the Freedom of Information and Protection of Privacy Act, 1987 after January 1, 1990.*
6. *The confidentiality provisions listed in Appendix B to this report should not be repealed since they are necessary and consistent with the Freedom of Information and Protection of Privacy Act, 1987.*
7. *Each of the confidentiality provisions listed in Appendix B to this report should be amended to provide that they are subject to the Freedom of Information and Protection of Privacy Act, 1987.*





8. *The following confidentiality provisions should be repealed:*

*the North Pickering Development Corporation Act, s. 6*  
*the Ontario Land Corporation Act, s. 6*  
*the Environmental Assessment Act, s. 30.*



## INTRODUCTION

Prior to the enactment of the freedom of information legislation in Ontario, the confidentiality of government records was protected through secrecy provisions included in statutes. Pursuant to s. 67(2) of the Freedom of Information and Protection of Privacy Act, 1987, these confidentiality provisions override the legislation until January 1, 1990. At that time, the Freedom of Information and Protection of Privacy Act, 1987 prevails over a confidentiality provision in any other Act unless the other Act specifically provides otherwise. The legislation further provides that the Standing Committee on the Legislative Assembly shall undertake a comprehensive review of all confidentiality provisions contained in Acts in existence on January 1, 1988 and shall make recommendations to the Legislative Assembly regarding:

- the repeal of unnecessary or inconsistent provisions; and
- the amendment of provisions that are inconsistent with this Act.

The Sub-Committee of the Standing Committee on the Legislative Assembly was directed by the full Committee to undertake the review of the confidentiality provisions and report back with its recommendations. This review was conducted during the week of September 11, 1989. As part of its deliberations, the Sub-Committee examined Management Board of Cabinet's Report on s. 67(2) of the Freedom of Information and Protection of Privacy Act and heard submissions from representatives of Management Board of Cabinet as well as from the Ministries of Revenue, Financial Institutions, Consumer and Commercial Relations, Community and Social Services and Labour. The Sub-Committee reported to the full committee on September 21, 1989. The following is the full Committee's report.

## REVIEW OF CONFIDENTIALITY PROVISIONS

### Areas of Inadequate Protection of Interests

In its report, Management Board of Cabinet identified approximately 130 confidentiality provisions in 90 Ontario statutes, all of which were reviewed by the members of the Sub-Committee. Management Board of Cabinet determined that the





interests protected by the confidentiality provisions in eight areas were not adequately protected under the Freedom of Information and Protection of Privacy Act, 1987. The following is a list of those confidentiality provisions grouped according to subject area:

#### LABOUR MEDIATORS

- Colleges Collective Bargaining Act, s. 21(1)
- Labour Relations Act, s. 111(2), (3)
- School Boards and Teachers Collective Negotiations Act, s. 26(1)

#### TRADE UNION MEMBERSHIP

- Colleges Collective Bargaining Act, s. 77(6)
- Crown Employees Collective Bargaining Act, s. 51(1)
- Labour Relations Act, s. 111(1)
- Pay Equity Act, 1987, s. 32(4)

#### TAX RECORDS

- Assessment Act, s. 57(1)
- Corporations Tax Act, s. 91(1)
- Fuel Tax Act, s. 22
- Gasoline Tax Act, s. 30
- Income Tax Act, s. 46
- Mining Tax Act, s. 14
- Race Tracks Tax Act, s. 13(1)
- Retail Sales Tax Act, s. 15(1)
- Succession Duty Act, s. 43(1), (2)
- Succession Duty Supplementary Provisions Act, s. 7(3)
- Tobacco Tax Act, s. 22(1)

#### CHILD PROTECTION, CHILD ABUSE AND ASSESSMENT OF CHILDREN

- Child and Family Services Act, 1984, ss. 41(8), (9), (10); 50(4), (5); 70(5); 71(6); 72(11); and 112(6)

#### SEALED COURT RECORDS

- Courts of Justice Act, 1984, s. 147(2)

#### SECURITIES INVESTIGATION

- Securities Act, s. 14
- Commodity Futures Act, s. 10

#### COLLECTION OF STATISTICAL INFORMATION

- Statistics Act, s. 4(2)

#### ADOPTION INFORMATION

- Child and Family Services Act, 1984, s. 158a(1), (5)
- Vital Statistics Act, s. 24(2)



In the majority of cases, Management Board of Cabinet concluded that adequate protection could be ensured by amending existing exemptions in the Freedom of Information and Protection of Privacy Act, 1987. Specific amendments proposed included:

- the addition of an exemption under s. 17 (commercial information exemption) for those confidentiality provisions relating to Labour Mediator matters;
- the addition of an exemption under s. 21 (personal information exemption) for those confidentiality provisions relating to Trade Union Membership (with the exception of s. 32(4) of the Pay Equity Act, 1987); and
- the addition of an exemption under s. 17 for those confidentiality provisions relating to Tax Records (with the exception of s. 57(1) of the Assessment Act).

The Committee recommends that:

1. **The amendments to the Freedom of Information and Protection of Privacy Act, 1987 proposed by Management Board of Cabinet for the categories of Labour Mediators, Trade Union Membership and Tax Records and listed in Appendix A to this report should be accepted.**

Management Board of Cabinet determined that it would be too difficult to protect the remaining confidentiality provisions in the eight areas previously mentioned through amendments to the existing exemptions in the Freedom of Information and Protection of Privacy Act, 1987. It was therefore proposed that the Freedom of Information and Protection of Privacy Act, 1987 be amended to provide that the provisions listed below prevail over the Act.

- Assessment Act, s. 57(1)
- Child and Family Services Act, 1984, ss. 41(8), (9), (10); 50(4), (5); 70(5); 71(6); 72(11), 112(6) and 158a(1), (5)
- Commodity Futures Act, s. 10
- Courts of Justice Act, 1984, s. 147(2)
- Pay Equity Act, 1987, s. 32(4)
- Securities Act, s. 14
- Statistics Act, s. 4(2)
- Vital Statistics Act, s. 24(2)





After reviewing the confidentiality provisions in question, the Committee recommends that:

2. The following overrides to the Freedom of Information and Protection of Privacy Act, 1987 proposed by Management Board of Cabinet in its report on confidentiality provisions should be accepted:

Assessment Act, s. 57(1)

Child and Family Services Act, 1984, ss. 41(8), (9), (10); 50(4), (5); 70(5); 71(6); 72(11); 112(6) and 158a(1), (5)

Commodity Futures Act, s. 10

Courts of Justice Act, 1984, s. 147(2)

Pay Equity Act, 1987, s. 32(4)

Securities Act, s. 14

Statistics Act, s. 4(2)

Vital Statistics Act, s. 24(2).

The Committee has identified three confidentiality provisions in addition to those specified by Management Board of Cabinet, which, in its opinion, should override the Freedom of Information and Protection of Privacy Act, 1987: the Health Insurance Act, s. 44; the Health Protection and Promotion Act, 1983, s. 38; and the Ontario Drug Benefit Act, 1986, s. 13. It is believed that the provisions of the Freedom of Information and Protection of Privacy Act, 1987 may not adequately protect the confidentiality of certain health information (e.g., AIDS information) and that these confidentiality provisions should therefore remain in effect. Accordingly, the Committee recommends that:

3. An override to the Freedom of Information and Protection of Privacy Act, 1987 should be provided for
  - the Health Insurance Act, s. 44
  - the Health Protection and Promotion Act, 1983, s. 38
  - the Ontario Drug Benefit Act, 1986, s. 13.

Members of the Committee are also concerned that the Freedom of Information and Protection of Privacy Act, 1987 does not address the issue of verbal transmission of information by civil servants. The Committee recommends that:

4. The Chairman of Management Board of Cabinet should consider an amendment to the Public Service Act or other relevant legislation which would clearly outline the duties for civil servants to maintain confidentiality other than as provided for in the Freedom of Information and Protection of Privacy Act, 1987.



## Areas of Adequate Protection of Interests

With respect to the remaining confidentiality provisions, Management Board of Cabinet concluded that the confidentiality interests protected by the existing provisions in the statutes were adequately protected by an exemption in the Freedom of Information and Protection of Privacy Act, 1987 or reflected confidentiality interests that were no longer good public policy or of sufficient importance to warrant any legislative action. It was recommended that these confidentiality provisions not continue to override the Freedom of Information and Protection of Privacy Act, 1987 after January 1, 1990.

Management Board of Cabinet further recommended, however, that these provisions not be repealed. It is believed that they are consistent with the Freedom of Information and Protection of Privacy Act, 1987 and are necessary for other purposes. These purposes include:

- prevention of wrongful or unauthorized disclosure of records;
- some provisions contain non-compellability and other evidentiary provisions;
- some provisions bind persons who are not employees of government institutions;
- providing for access or disclosure rights in the same sections as confidentiality provisions; and
- reinforcing that information which is supplied to the government in confidence is confidential, thereby assisting in establishing the "supplied in confidence" test in the exemption in s. 17(1) of the Freedom of Information and Protection of Privacy Act, 1987.

The Committee agrees that these remaining provisions should not continue to override the Freedom of Information and Protection of Privacy Act, 1987 after January 1, 1990 and therefore recommends that:

5. The confidentiality provisions listed in Appendix B to this report should not continue to override the Freedom of Information and Protection of Privacy Act, 1987 after January 1, 1990.

Members further agree that the majority of these provisions serve other purposes and that since they are not inconsistent with the Freedom of Information and Protection of Privacy Act, 1987 they should not be repealed. The Committee recommends that:





6. The confidentiality provisions listed in Appendix B to this report should not be repealed since they are necessary and consistent with the Freedom of Information and Protection of Privacy Act, 1987.

However, members are concerned that the continued existence of these confidentiality provisions will create confusion. It is therefore recommended that:

7. Each of the confidentiality provisions listed in Appendix B to this report should be amended to provide that they are subject to the Freedom of Information and Protection of Privacy Act, 1987.

The Committee has also identified three confidentiality provisions which, in its opinion, are no longer necessary in view of the Freedom of Information and Protection of Privacy Act, 1987. It therefore recommends that:

8. The following confidentiality provisions should be repealed:

the North Pickering Development Corporation Act, s. 6  
the Ontario Land Corporation Act, s. 6 and  
the Environmental Assessment Act, s. 30.



## APPENDIX A

### Proposed Amendments to the Freedom of Information and Protection of Privacy Act, 1987 for Labour Mediators, Trade Union Membership and Tax Records

1. (1) Subsection 17(1) of the Freedom of Information and Protection of Privacy Act, 1987, . . . is amended by striking out "or" at the end of clause (b), by adding "or" at the end of clause (c) and by adding thereto the following clause:
  - (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.
- (2) Subsection 17(2) of the . . . Act is repealed and the following substituted therefor:
 

Tax information

  - (2) A head shall refuse to disclose a record that reveals information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.

Consent to disclosure

  - (3) A head may disclose a record described in subsections (1) or (2) if the person to whom the information relates consents to the disclosure.
2. Subsection 21(3) of the . . . Act is amended by striking out "or" at the end of the clause (g), by adding "or" at the end of clause (h) and by adding thereto the following clause:
  - (i) indicates whether an individual is or is not a member of a trade union or does or does not desire to be represented by a trade union.



## APPENDIX B

### Confidentiality Provisions Which Should Not Override the Freedom of Information and Protection of Privacy Act, 1987

#### Attorney General

- Juries Act, R.S.O. 1980, c. 226, s. 22
- Metropolitan Toronto Police Force Complaints Act, 1984, S.O. 1984, c. 63, s. 26
- Public Trustee Act, R.S.O. 1980, c. 422, s. 18
- Support and Custody Orders Enforcement Act, 1985, S.O. 1985, c. 6, s. 6(6)

#### Consumer and Commercial Relations

- Amusement Devices Act, 1986, S.O. 1986, c. 6, s. 15
- Bailiffs Act, R.S.O. 1980, c. 37, s. 17
- Business Corporations Act, 1982, S.O. 1982, c. 4, s. 269(3) (as amended by S.O. 1986, c. 57, s. 21)
- Business Practices Act, R.S.O. 1980, c. 55, s. 14
- Change of Name Act, 1986, S.O. 1986, c. 7, s. 8(2)
- Collection Agencies Act, R.S.O. 1980, c. 73, ss. 17, 21(3), (4)
- Consumer Protection Act, R.S.O. 1980, c. 87, ss. 13(2), 17
- Consumer Reporting Act, R.S.O. 1980, c. 89, s. 18
- Corporations Information Act, R.S.O. 1980, c. 96, s. 8
- Discriminatory Business Practices Act, R.S.O. 1980, c. 119, s. 13
- Elevating Devices Act, R.S.O. 1980, c. 135, s. 8
- Energy Act, R.S.O. 1980, c. 139, s. 6
- Liquor Licence Act, R.S.O. 1980, c. 244, s. 24
- Motor Vehicle Dealers Act, R.S.O. 1980, c. 299, s. 14





- Paperback and Periodical Distributors Act, R.S.O. 1980, c. 366, s. 12
- Real Estate and Business Brokers Act, R.S.O. 1980, c. 431, ss. 16, 21 (4), (5)
- Travel Industry Act, R.S.O. 1980, c. 509, ss. 16, 21
- Upholstered and Stuffed Articles Act, R.S.O. 1980, c. 517, s. 10
- Vital Statistics Act, R.S.O. 1980, c. 524, ss. 11(5), 12(2), 17(5), 31(2), 40(1), (3)

#### **Correctional Services**

- Ministry of Correctional Services Act, R.S.O. 1980, c. 275, s. 10

#### **Education**

- Education Act, R.S.O. 1980, c. 129, s. 237(2)(a), (10)
- Provincial Schools Negotiations Act, R.S.O. 1980, c. 403, s. 6(1)

#### **Energy**

- Ontario Energy Board Act, R.S.O. 1980, c. 332, s. 62

#### **Environment**

- Environmental Assessment Act, R.S.O. 1980, c. 140, s. 27(1)
- Environmental Protection Act, R.S.O. 1980, c. 141, s. 106(1)
- Pesticides Act, R.S.O. 1980, c. 376, s. 19

#### **Financial Institutions**

- Commodity Futures Act, R.S.O. 1980, c. 78, s. 63
- Cooperative Corporations Act, R.S.O. 1980, c. 91, s. 142
- Deposits Regulation Act, R.S.O. 1980, c. 116, s. 6
- Insurance Act, R.S.O. 1980, c. 218, s. 93
- Mortgage Brokers Act, R.S.O. 1980, c. 295, ss. 25, 27(4)
- Securities Act, R.S.O. 1980, c. 466, ss. 74, 137(2)

#### **Health**

- Ambulance Act, R.S.O. 1980, c. 20, s. 18(3)
- Denture Therapists Act, R.S.O. 1980, c. 115, s. 23(1)
- Funeral Services Act, R.S.O. 1980, c. 180, s. 32(1)



- Healing Arts Radiation Protection Act, R.S.O. 1980, c. 195, s. 21
- Health Disciplines Act, R.S.O. 1980, c. 196, ss. 41(1), 65(1), 86a(1), 109(1), 134(1)

### **Housing**

- Building Code Act, R.S.O. 1980, c. 51, s. 23

### **Labour**

- Labour Relations Act, R.S.O. 1980, c. 228, s. 111(6)
- Occupational Health and Safety Act, R.S.O. 1980, c. 321, s. 34
- Crown Employees Collective Bargaining Act, R.S.O. 1980, c. 108, s. 51(2), (3)

### **Natural Resources**

- Petroleum Resources Act, R.S.O. 1980, c. 377, s. 5(1)
- Surveyors Act, S.O. 1988, c. 6, s. 36(1)
- Mining Act, R.S.O. 1980, c. 268, s. 162(7)

### **Northern Development and Mines**

- Ontario Mineral Exploration Program Act, R.S.O. 1980, c. 346, s. 9

### **Revenue**

- Employee Share Ownership Plan Act, 1988, S.O. 1988, c. 3, s. 19(1)
- Ontario Guaranteed Annual Income Act, R.S.O. 1980, c. 336, s. 11(1)
- Ontario Pensioners Property Tax Assistance Act, R.S.O. 1980, c. 352, s. 11(1)
- Small Business Development Corporations Act, R.S.O. 1980, c. 475, s. 31

### **Skills Development**

- Ontario Youth Employment Act, R.S.O. 1980, c. 362, s. 7(4)

### **Solicitor General**

- Human Tissue Gift Act, R.S.O. 1980, c. 210, s. 11
- Police Act, R.S.O. 1980, c. 381, s. 59(7)
- Private Investigators and Security Guards Act, R.S.O. 1980, c. 390, s. 18

### **Tourism and Recreation**

- Niagara Parks Act, R.S.O. 1980, c. 317, s. 16
- St. Lawrence Parks Commission Act, R.S.O. 1980, c. 486, s. 13





**Transportation**

- Highway Traffic Act, R.S.O. 1980, c. 198, ss. 18(8), 177(3), 178(3)
- Public Commercial Vehicles Act, R.S.O. 1980, c. 407, s. 34
- Public Vehicles Act, R.S.O. 1980, c. 425, s. 31
- Railways Act, R.S.O. 1950, c. 331, s. 278(3), (5)

## Transportation

- Highway Trust Fund Act, R.S.O. 1990, c. 198, ss. 18(2), 177(3), 178(3)
- Public Transportation Vehicles Act, R.S.O. 1990, c. 407, s. 34
- Traffic Vehicles Act, R.S.O. 1990, c. 432, s. 31
- Roadways Act, R.S.O. 1990, c. 331, s. 27(3), (4)





ISBN 0-7729-6176-X



3 1761 11468 10 8